2000

Board of Education of the Alpine School District v. Utah State Tax Commission : Brief of Appellee

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE BOARD OF EDUCATION OF THE ALPINE SCHOOL DISTRICT, Petitioner / Appellant,	)	
vs.	)	No. 20000109-CA
UTAH STATE TAX COMMISSION, Respondent / Appellee.	)	Priority No. 14

BRIEF OF UTAH STATE TAX COMMISSION

Appeal from a Final Decision of the
Utah State Tax Commission

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JURISDICTION

This Court has jurisdiction pursuant to Utah Code Ann. §§ 59-1-602 (1996), 59-1-610 (1996), 78-2-2 (1996) and 78-2a-3 (1988).

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Issue. The issue presented for decision by this Court is whether the Utah State Tax Commission (hereinafter the "Commission") properly corrected Alpine School District's (hereinafter "Alpine") proposed tax rate based on a change in the certified rate because of new fee-in-lieu revenue estimates.

Standard of Review. When reviewing formal administrative proceedings commenced before the Commission, the Court of Appeals or Supreme Court shall grant the Commission deference concerning its written findings of fact, applying a substantial evidence standard on review; and grant the Commission no deference concerning its conclusions of law, applying a correction standard, unless there is an explicit grant of discretion contained in a statute at issue before the appellate court. Utah Code Ann. § 59-1-610(1)(a) and (b) (1996).

Utah Code Ann. § 59-2-914 (1996) contains an explicit

grant of discretion from the legislature in subsection (1) where it states:

> (1) **If the commission determines** that a levy established for a taxing entity set under Section 59-2-913 is in excess of the maximum levy permitted by law, the commission shall:
> (a) lower the levy so that it is set at the maximum level permitted by law;
> (b) notify the taxing entity which set the excessive rate that the rate has been lowered; and
> (c) notify the county auditor of the county or counties in which the taxing entity is located to implement the rate established by the commission . . . .

(Emphasis added.)

Where "a statute at issue" contains an explicit grant of discretion, the reviewing court shall defer to the Commission's conclusions of law pursuant to Utah Code Ann. § 59-1-610(1)(b) (1996). The standard of review in such cases is one of reasonableness, and the Commission's interpretation and decision shall be upheld as long as it is not unreasonable. See Morton International v. Auditing Div. of the Utah State Tax Comm'n, 814 P.2d 581 (Utah 1991). See also Eaton Kenway v. Auditing Div. of the Utah State Tax Comm'n, 906 P.2d 882 (Utah 1995).

CONSTITUTIONAL PROVISIONS AND STATUTES

Utah Const. art. XIII, § 11

Utah Code Ann. § 17-36-13 (1995)

Utah Code Ann. § 59-1-610 (1996)

Utah Code Ann. § 59-2-405.1 (Supp. 1999)

Utah Code Ann. § 59-2-912 (1996)

Utah Code Ann. § 59-2-913 (Supp. 1999)

Utah Code Ann. § 59-2-914 (1996)

Utah Code Ann. § 59-2-918 (Supp. 1999)

Utah Code Ann. § 59-2-919 (Supp. 1999)

Utah Code Ann. § 59-2-920 (1996)

Utah Code Ann. § 59-2-921 (Supp. 1999)

Utah Code Ann. § 59-2-924 (Supp. 1999)

See Addendum A for a copy of these statues.

STATEMENT OF THE CASE

This case is an appeal by Alpine School District of a Tax Commission decision dated January 3, 2000. (R. 28.) On October 6, 1999, Alpine petitioned the Commission for a redetermination of the Property Tax Division's (hereinafter the "Division or Property Tax Division") decision to change the 1999 property tax rate proposed by the District. (R. 69.)

A formal hearing took place before the Commission regarding Alpine's petition and a similar petition by Nebo School District. (R. 28, 75.) The Tax Commission issued its Findings of Fact, Conclusions of Law, and Final Decision on January 3, 2000, which affirmed the Property Tax Division's decision to lower the proposed property tax rates of both districts. (R. 28-41.) Only Alpine has appealed this decision.

STATEMENT OF FACTS

For the 1999 tax year, the Property Tax Division calculated for ad valorem property tax purposes "certified tax rates" for each taxing entity in the state. (R. 29.) In accordance with legislative instruction, the 1999 certified tax rate formula included an adjustment to offset changes in motor vehicle fee-in-lieu revenue resulting from 1998 legislative modifications to the motor vehicle statutes. Utah Code Ann. § 59-2-924(2)(g). This adjustment to the certified rates was estimated by the Division for each taxing entity. (R. 29.)

After receiving its certified rate for 1999, Alpine set its budget for the upcoming fiscal year. The proposed budget required ad valorem revenue in excess of the amount

to be collected under the certified rate. As a result, Alpine proposed a 1999 tax rate that was higher than its certified rate (referred to herein as the "proposed rate"). Alpine noticed to the public the revenue increase of its proposed rate pursuant to Utah Code Ann. § 59-2-919. (R. 29.)

Before tax rates proposed by taxing entities were approved by the Division for the 1999 tax year, the Tax Commission determined that the Division's fee-in-lieu revenue adjustments, as used in calculation of certified tax rates, had been miscalculated. The Commission determined that the Division had under-estimated the revenue to be collected from fee-in-lieu sources. Therefore, the Commission ordered the Division to revise these adjustments and recalculate certified tax rates.
(R. 29-30.)

The revised fee-in-lieu revenue adjustments generally resulted in lower certified tax rates. (R. 30.) In its process of approving the proposed tax rates, the Division lowered the proposed rate that was submitted by Alpine to reflect the change between the recalculated, lower certified tax rates, and the original, higher certified tax rates. (R.

30.) This adjustment was made by the Commission to account for the additional revenue anticipated to be received from fee-in-lieu sources.

SUMMARY OF ARGUMENT

The Commission had authority to reduce Alpine's certified tax rate under Utah Code Ann. § 59-2-924(2)(g) to prevent Alpine from receiving a windfall under the new tax system. Because the Commission had authority to reduce Alpine's certified rate, the Commission also had authority to reduce Alpine's proposed rate in order to give effect to the plain language of the statute and its legislative intent. Where the language and history of the statute showed that preventing windfalls was a key purpose, the Commission was within its authority to reduce Alpine's proposed rate. Also, Alpine suffered no material harm as a result of the Commission's decision to reduce its proposed rate because Alpine will receive the revenue required to meet its proposed budget.

In addition to Section 59-2-924(2)(g), the Commission also had authority under Section 59-2-914 to reduce Alpine's proposed rate because it violated the maximum levy permitted by law. Because the revenue estimates used by Alpine were

incorrect, the truth-in-taxation procedures that Alpine fulfilled under Section 919 were inherently flawed. Armed with an explicit grant of discretion under Section 914, the Commission rightfully reduced Alpine's proposed rate because Alpine presented the rate based on an incorrect assumption of fee-in-lieu revenue.

General support for the Commission's authority to reduce Alpine's proposed rate comes from the Utah Constitution under article XIII, Section 11 as well as Sections 59-2-913 through 924 of the Utah Code. These provisions allow the Commission broad authority to review and approve the proposed rates of taxing entities. Because of the incorrect estimates in fee-in-lieu revenue, the Commission properly reduced Alpine's rate to coincide with the new estimates. Therefore, the Commission's actions will keep Alpine whole while preventing a windfall based on incorrect estimates.

ARGUMENT

I. THE COMMISSION HAD AUTHORITY TO REDUCE ALPINE'S CERTIFIED TAX RATE WHICH RESULTED IN A REDUCTION OF ALPINE'S PROPOSED TAX RATE.

A. UNDER SECTION 59-2-924(2)(g), THE COMMISSION WAS REQUIRED TO ADJUST CERTIFIED TAX RATES BY ANY AMOUNT NECESSARY TO OFFSET THE LOSS OR GAIN IN REVENUES FROM THE CHANGE IN REVENUE FROM THE UNIFORM FEE-IN-LIEU OF AD VALOREM TAX PLACED UPON MOTOR VEHICLES.

Section 59-2-924(2)(g) required the 1999 certified tax rates to be adjusted to offset changes in fee-in-lieu revenue resulting from the 1998 legislative enactments and provides as follows:

> For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

To better understand the consequences of adjusting certified and proposed rates, it is necessary to describe the procedure for budgeting and proposing rate increases. A taxing entity is permitted to annually issue a levy for ad valorem property tax upon the property located within its

jurisdiction. This levy is limited by law to the "certified rate" which is "a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were collected by that taxing entity for the prior year." Utah Code Ann. § 59-2-924(2)(a)(i).

Under Section 924(2)(a)(iii), the certified rate is calculated by "dividing the ad valorem property tax revenue collected for the prior year by the taxing entity by the taxable value established in accordance with Utah Code Ann. § 59-2-913." In addition to the ad valorem revenue collected by a taxing entity, fee-in-lieu revenue is also collected.[1]

A taxing entity is prohibited from budgeting ad valorem revenue in excess of the revenue allowed under the certified rate unless it properly completes the requirements of Utah Code Ann. §§ 59-2-918 and 919. These sections are known as the "truth-in-taxation" statutes and require the entities to advertise ad valorem tax increases necessary to meet budget requirements and to hold a public hearing regarding these

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[1] Fee-in-lieu revenue is primarily derived from the registration of vehicles. Pursuant to Utah Code Ann. §§ 59-2-405 and 405.1, certain vehicles are exempt from ad valorem property tax and instead a uniform fee-in-lieu of ad valorem tax is imposed.

issues.

In this case, Alpine's budget exceeded the amount of revenue estimated to be received under the certified rate. When the certified rate was subsequently adjusted downward to account for an estimate of greater revenue from fee-in-lieu collections, the proposed rate likewise needed to be reduced so that the amount of increased revenue as advertised by Alpine remained accurate. Without this correction in the proposed rate, Alpine's truth-in-taxation notice could be construed as misleading because its proposed rate was based on incorrect estimates of fee-in-lieu revenue. As a result, the taxpayers were given notice of an ad valorem increase that was beyond the amount actually needed to fund Alpine's proposed budget. These issues, along with the statutory authority for the correction of Alpine's rate, are discussed below.

In 1998, the legislature changed the uniform fee-in-lieu of ad valorem taxes charged annually on motor vehicles. Prior to 1998, the State used a percentage system where 1.5 percent of the vehicle's fair market value determined the yearly fee-in-lieu of ad valorem property tax. The legislature changed this method in 1998 to a system where

the fee-in-lieu of ad valorem property tax was based solely on the year of the vehicle. Utah Code Ann. § 59-2-405.1. Knowing that this shift might create some problems with estimating fee-in-lieu revenue to calculate the certified rates, the legislature enacted Section 59-2-924(2)(g) to balance any possible fluctuations in revenue due to the new system. The statute allowed for a change in the certified rate to balance any increases or decreases in fee-in-lieu revenue based on the change.

George Mantes, the sponsor of S.B. 50 (1998) which created the new system, stated during the Senate floor debates that "[t]he essence of the bill is that if a county collects more than they're collecting under the present system they would return it to the taxpayers and if they collect less they would be able to be kept whole [by increasing their ad valorem tax rate]." (See Addendum B.) This reflects the intent that certified rates must be raised or lowered to keep the counties whole. This is exactly what the Commission did in this case.

After amending its original estimates of revenue for the new fee-in-lieu system, the Commission ordered the Division to lower Alpine's certified tax rate. Because more

revenue would be generated from fee-in-lieu collections than originally estimated, the Commission was required by the above statute to lower the certified rate. Otherwise, the certified rate on property taxes would generate more revenue than Alpine was allowed to collect by law. The result would be an unnecessary increase in ad valorem property taxes.

B. BECAUSE THE COMMISSION WAS REQUIRED TO ADJUST ALPINE'S CERTIFIED RATES, IT WAS ALSO REQUIRED TO ADJUST THE PROPOSED RATES.

Once the Commission lowered Alpine's certified tax rate, it was required to lower the proposed rate in order to give this statute effect. Alpine conceded that the legislature authorized the Division to adjust certified rates (Alpine's Brief at 14-15).[2] However, Alpine argued that the Commission could not go beyond this and lower the proposed rate because the statute states only that certified rates may be lowered and says nothing about proposed rates.

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[2] Although acknowledging that Utah Code Ann. § 59-2-924(2)(g) authorized the Commission to make the adjustments to the certified rate for estimates of fee-in-lieu revenue, Alpine nevertheless attempted to assert in its brief that it made its own estimates of fee-in-lieu revenue. (See Alpine's Opening Brief p. 7, ¶ 12 and p. 17.) Such positions by Alpine are in conflict and do not square with the plain meaning of Utah Code Ann. § 59-2-924(2)(g) which places with the Commission the authority and obligation to estimate fee-in-lieu revenue.

Allowing the Commission to lower certified rates without allowing the Commission to lower proposed rates frustrates the purpose of the statute.

"Statutory enactments are to be so construed as to render all parts thereof relevant and meaningful, and . . . interpretations are to be avoided which render part of a provision nonsensical or absurd." Perrine v. Kennecott Mining Corp., 911 P.2d 1290, 1292 (Utah 1996). Because the certified rate is the key component of the proposed rate, lowering one necessarily involves lowering the other in order to give the statute effect. It is unlikely that the legislature envisioned a problem exactly like the one at issue in this case. The legislature probably thought the certified rates would be lowered before any proposed rates were submitted. However, because the certified rates were lowered after the proposed rates were submitted, the intent of the legislature to balance the revenues of the new tax system required a lowering of the proposed rates.

According to the Commission, Section 59-2-924(2)(g) "ensures that a taxing entity does not receive a shortfall or a windfall in its combined total of property tax and fee-in-lieu revenue as a result of this specific legislative

change." (R. 33.) Alpine's Brief claims that this statement of intent is not supported by the plain language of the statute or any cited legislative history. This assertion is incorrect. First, the plain language of Section 59-2-924(2)(g) states that "a taxing entity's certified rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property . . . ." Clearly, the legislature was aiming to balance any shortfalls or windfalls incurred by taxing entities when it chose this offsetting language. This plain language supports the adjustments and is strengthened by the comments of Senator Mantes above.

In addition, Senator Blackham spoke on the bill during the Senate Floor debates, stating that "[t]hose counties that get a windfall will have it reduced because the bill doesn't allow that. So the bill doesn't allow anyone to have an increase . . . ." (See Addendum B.) Here, the plain language of the statute is again supported and this clear legislative history shows that the bill was definitely designed to prevent windfalls. Thus, Alpine's argument that the Commission ignored the plain language of section 59-2-924(2)(g) and did not offer support for its position from

the legislative history is incorrect. (Alpine's Brief at 15.) Based on the language of the statute and the legislative history cited above, the plain language and legislative intent behind Section 924(2)(g) support the Commission's lowering of Alpine's proposed rate.

Further support for the legislature's intent to prevent windfalls by taxing entities comes from the amendments to Section 924 during the 2000 legislative session. (H.B. 178, see Addendum C.) These recent amendments give the Commission the power to adjust certified rates in the event that a taxing entity receives more fee-in-lieu revenue than it did in the prior year. Although this new statute has an effective date of January 1, 2000, and is not binding on this case, it does provide further support for the notion that the intent behind Section 924(2)(g) was to prevent windfalls and fluctuations in revenue based on the new fee-in-lieu system. This, combined with the plain language and legislative intent behind Section 924(2)(g) supports the Commission's authority to reduce certified rates.

C. THE COMMISSION'S ADJUSTMENT OF ALPINE'S PROPOSED RATE UNDER SECTION 924(2)(g) RESULTED IN NO MATERIAL HARM TO ALPINE.

Alpine suffered no material harm as a result of the

Commission's decision to lower Alpine's proposed tax rate. Although Alpine was obviously frustrated with the changing estimates and shift in tax systems, no material harm resulted from the Commission's actions. Alpine received the initial certified rate containing the new fee-in-lieu revenue estimates from the Property Tax Division and determined that it required more than the amount allowed by the original certified rate to fund it's budget. (R. 29.) Alpine then proceeded through the truth-in-taxation requirements of Section 919 in order to validate a higher proposed rate to obtain the revenue it needed.

When the Commission determined that more revenue would be collected by fee-in-lieu than originally estimated, the Commission found that under Alpine's proposed rate, Alpine would receive more property tax revenue than it needed for its budget. By lowering the proposed rate, the Commission estimated that Alpine would receive an amount in fee-in-lieu revenue and property tax closer to the amount Alpine desired when it set its proposed rate.

To illustrate this in an example, suppose that Alpine needed a total of $100,000 in revenue for the year. If Alpine estimated that fee-in-lieu revenue would generate

$50,000, another $50,000 must be collected from other sources. To generate the other $50,000, suppose Alpine proposed a ad valorem property tax rate of 10 percent. If the estimates of fee-in-lieu revenue are changed so that Alpine will actually receive $60,000 in such revenue, keeping the 10 percent rate would generate a total of $110,000. By lowering Alpine's proposed rate to 8 percent, an estimated $40,000 will be collected through ad valorem property tax. Thus, Alpine will receive the entire $100,000 that it needs for the year. Allowing Alpine to keep the 10 percent rate would mean that Alpine would receive a $10,000 windfall in excess of the amount it needed for the year. When the Commission reduced Alpine's rate, the estimated combined revenue from fee-in-lieu and ad valorem property tax remained at the level Alpine requested. Therefore, Alpine suffered no material harm as a result of the Commission's actions in this case.

II. UNDER UTAH CODE ANN. § 59-2-914, THE COMMISSION HAD AUTHORITY TO LOWER ALPINE'S RATE BECAUSE IT VIOLATED THE MAXIMUM LEVY PERMITTED BY LAW WHEN IT PRESENTED INCORRECT INFORMATION TO THE TAXPAYERS UNDER UTAH CODE ANN. § 59-2-919.

Utah Code Ann. § 59-2-914 grants express permission to the Commission to determine whether a levy established by a

taxing entity is in excess of the maximum levy permitted by law. Section 59-2-914(1) states:

> If the commission determines that a levy established for a taxing entity set under Section 59-2-913 is in excess of the maximum levy permitted by law, the commission shall:
>
> (a) lower the levy so that it is set at the maximum level permitted by law;
>
> (b) notify the taxing entity which set the excessive rate that the rate has been lowered; and
>
> (c) notify the county auditor of the county or counties in which the taxing entity is located to implement the rate established by the commission.

This statute gives broad discretion to the Commission by using the language, "[i]f the commission determines . . ." as well as "to implement the rate established by the commission." Where a statute at issue contains an explicit grant of discretion, the reviewing court shall defer to the Commission's conclusions of law pursuant to Utah Code Ann. § 59-1-610(1)(b). The standard of review in such cases is one of reasonableness and the Commission's interpretation and decision shall be upheld as long as it is not unreasonable. See Morton International v. Auditing Div. of the Utah State Tax Comm'n, 814 P.2d 581 (Utah 1991). See also Eaton Kenway

v. Auditing Div. of the Utah State Tax Comm'n, 906 P.2d 882 (Utah 1995).

Although Alpine followed the technical and procedural steps of Section 59-2-919, the information presented to the taxpayers was based on an incorrect assumption. Alpine's proposed increase was based on the assumption that even less revenue would be generated from fee-in-lieu than estimated by the Tax Commission's final estimates and certified rate. Thus, the taxpayers were presented with a proposed rate increase that was based on an incorrect estimate of fee-in-lieu revenue. Therefore, the Commission had authority under Section 59-2-914 to lower Alpine's proposed rate to be consistent with Alpine's proposed budget.[3]

Rather than requiring that Alpine repeat the tax rate setting procedures under Section 59-2-919, the Commission lowered the proposed rates to reflect the difference between the lower, recalculated tax rates and the original, higher certified tax rates. By lowering the proposed rate to

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[3]Alpine would have been required to notice its budget to the public under Utah Code Ann. § 17-36-13. It is this budget that resulted in Alpine's proposed rate increase. To allow a higher rate than necessary to fund a particular budget would frustrate the budget notice requirements of Section 17-36-13.

reflect the difference between Alpine's estimates and the new Division estimates, the Commission ensured that Alpine would receive enough funds to cover its proposed budget as was Alpine's intent in securing the proposed rate. As a result, the new rate would prevent Alpine from receiving a windfall based on a misrepresentation to the taxpayers.

Reading Sections 59-2-924(2)(g), 59-2-914, and 59-2-919 together presents the greatest support for the Commission's lowering of Alpine's proposed rate. "Harmony and consistency are positive values in a legal system because they serve the interests of impartiality and minimize arbitrariness. Construing statutes by reference to others advances those values." 2B Sutherland Statutory Construction § 5301 at 229 (5th ed. 1992). See Ray v. Atlantic Richfield Co., 435 U.S. 151, 159 (1978). See also State in Interest of A.B., 936 P.2d 1091, 1098 (Utah 1997).

Section 59-2-924 explicitly directs the Commission to raise or lower certified rates in order to compensate for changes created by the new fee-in-lieu structure. Section 59-2-914 directs the Commission to lower levies that exceed the maximum amount under law. Section 59-2-919 requires that the taxpayers be properly informed of proposed tax

increases. These three statutes read together strongly support the Commission's decision to lower Alpine's proposed rate.

III. THE COMMISSION'S ACTIONS WERE CONSISTENT WITH THE UTAH CONSTITUTION UNDER ARTICLE XIII, § 11 AND UTAH CODE ANN. §§ 59-2-913 THROUGH 926 WHICH GRANT THE TAX COMMISSION BROAD AUTHORITY TO "CERTIFY" TAX RATES.

The Utah Constitution, as well as a number of sections of the Utah Code, support the Commission's broad authority to approve the rates of taxing entities. Article XIII, § 11 of the Utah Constitution gives the Tax Commission an express constitutional duty to "administer and supervise the tax laws of the State." In addition, the Utah Supreme Court "has consistently upheld the Tax Commission's authority to carry out its responsibilities in furthering its constitutional and statutory mandate." Howell v. County Bd. of Cache County ex rel. IHC Hospitals, Inc., 881 P.2d 880, 890 (Utah 1994). See also Mountain States Tel. & Tel. Co. v. Garfield County, 811 P.2d 184, 190 (Utah 1991) (observing that "the tax commission, under article XIII, has to a large degree assumed control over the local administration of the property tax system").

Examples of the Tax Commission's authority to approve

and "certify" tax rates can be found in Sections 59-2-912 through 926. For example, Section 912 states that, "[t]he county legislative body shall report the rate and the levy and submit the statement required under Section 59-2-913 and any other information prescribed by rules of the commission for the preparation, review, and **certification** of the rate . . . ." (Emphasis added.)

Section 920 also supports the notion of broad Commission authority and responsibility to review and certify tax rates when it states, "[n]o tax rate in excess of the certified tax rate may be **certified** by the commission . . . . ." (Emphasis added.) Here again, the statute suggests that the Commission has authority not only to calculate certified rates but to approve or review rates in a type of certification process.

Section 921 provides for adjustments in entity tax rates as a result of an action by the County Board of Equalization, the Commission, or a court. This includes a change in the rate resulting from a change in an entity's tax base. Here, the action taken to adjust tax rates as a result of the revised estimated shortfall in motor vehicle revenue is, in fact, an adjustment to a taxing entity's tax

base. With the revised shortfall, an entity is estimated to have more revenue in its fee-in-lieu tax base than had previously been estimated in the rate setting process.

All of these grants of authority are especially important where a mistake is discovered and the Commission must determine whether the requirements and spirit of Section 919 were violated. In this case, where the rate was determined to be too high to satisfy the proposed needs of the taxing entity, the Commission lowered the proposed rate in order to prevent a windfall and violation of truth-in-taxation as well as a violation of Section 924(2)(g).

CONCLUSION

Under Section 59-2-924(2)(g), the Commission was required to lower Alpine's certified tax rate. This section, as well as Sections 59-2-912 through 921 gave the Commission authority to lower Alpine's proposed rates as well. In addition to these statutes, legislative history and principles of equity support the Commission's decision to lower Alpine's proposed rates. Based on these factors, this Court should uphold the Commission's decision below that Alpine's proposed tax rates be lowered in order to offset increases in fee-in-lieu revenue.

DATED this 12 day of July, 2000.

TIMOTHY A. BODILY
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of July, 2000, I caused two (2) copies of the foregoing BRIEF OF UTAH STATE TAX COMMISSION, to be mailed, postage prepaid, to:

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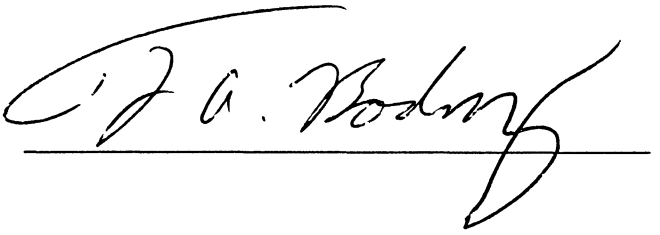

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ADDENDUM A

Sec. 11. [Creation of State Tax Commission - Membership - Governor to appoint - Terms - Duties - County boards - Duties.]

(1) There shall be a State Tax Commission consisting of four members, not more than two of whom shall belong to the same political party.

(2) The members of the Commission shall be appointed by the Governor, by and with the consent of the Senate, for such terms of office as may be provided by law.

(3) (a) The State Tax Commission shall administer and supervise the tax laws of the State.

(b) It shall be assess mines and public utilities and adjust and equalize the valuation and assessment of property among the several counties.

(c) It shall have such other powers of original assessment as the Legislature may provide.

(d) Under such regulations in such cases and within such limitations as the Legislature may prescribe, it shall review proposed bond issues, revise the tax levies of local governmental units, and equalize the assessment and valuation and valuation of property within the counties.

(4) The duties imposed upon the State Board of Equalization by the Constitution and Laws of this State shall be performed by the State Law Commission.

(5) Notwithstanding the powers granted to the State Tax Commission in this Constitution, the Legislature may authorize any court established under Article VIII to adjudicate, review, reconsider, or redetermine any matter decided by the State Tax Commission or by a County Board of Equalization relating to revenue and taxation as provided by statute.

(6) In each county of this State there shall be a County Board of Equalization consisting of the Board of County Commissioners of said county.

(7) The County Boards of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within their respective counties, subject to such regulation and control by the State Tax Commission as may be prescribed by law.

(8) The State Tax Commission and the County Boards of Equalization shall each have such other powers as may be prescribed by the Legislature.

History: Const. 1896; L. 1911, S.J.R. 12; 1930 (S.S.), S.J.R. 3; 1957, H.J.R. 2; 1998, S.J.R. 13, § 1.

Amendment Notes. - Laws 1998, S.J.R. 13, § 1 proposed amending this section to add subsection designations and Subsection (5). The proposed amendment was approved by the voters of the state at the 1998 general election and took effect on January 1, 1999.

Compiler's Notes. - Laws 1998, S.J.R. 13, § 3(2) provides: "Notwithstanding Subsection (1) [providing that the amendment, if approved, takes effect on January 1, 1999], the Legislature may apply the amendments proposed by this joint resolution retrospectively to July 1, 1994, to a statute authorizing a

court to adjudicate, review, reconsider, or redetermine a decision issued by the State Tax Commission or a County Board of Equalization relating to revenue and taxation, for which the Supreme Court, the Court of Appeals, or a district court has not issued a final unappealable judgment or order, if: (a) the Legislature expressly states that the statute is to be applied retrospectively; and (b) the statute does not enlarge, eliminate, or destroy a vested right."

For related statutory legislation, see Laws 1998, ch. 326, which amended §§ 59-1-601, 59-1-602, 59-1-604, and 59-2-1007. - s

Cross-References. - Apportionment of total assessment, § 59-2-801 et seq.

Assessment of property, § 59-2-201 et seq.

County legislative body as board of equalization, § 17-5-246.

Equalization of assessments, § 59-2-1001 et seq.

17-36-13. Public hearing on budget.

At the specified time and place or at any time and place to which such public hearing may be adjourned, the governing body shall hold a public hearing on the budget where all interested persons shall have an opportunity to be heard for or against the estimates of revenue and expenditures and performance data or any item in any fund.

History: L. 1975, ch. 22, § 13.

Cross-References. - Open and public meetings of public bodies, Title 52, Chapter 4.

59-1-610. Standard of review of appellate court.

(1) When reviewing formal adjudicative proceedings commenced before the commission, the Court of Appeals or Supreme Court shall:

(a) grant the commission deference concerning its written findings of fact, applying a substantial evidence standard on review; and

(b) grant the commission no deference concerning its conclusions of law, applying a correction of error standard, unless there is an explicit grant of discretion contained in a statute at issue before the appellate court.

(2) This section supercedes Section 63-46b-16 pertaining to judicial review of formal adjudicative proceedings.

59-2-405.1. Uniform fee on tangible personal property weighing 12,000 pounds or less.

(1) The property described in Subsection (2), except Subsection (2)(b)(ii), is exempt from ad valorem property taxes pursuant to Utah Constitution Article XIII, Section 14.

(2) (a) Except as provided in Subsection (2)(b), there is levied an annual statewide uniform fee in lieu of the ad valorem tax on:

(i) motor vehicles required to be registered with the state that weigh 12,000 pounds or less; and

(ii) state-assessed commercial vehicles required to be registered with the state that weigh 12,000 pounds or less.

(b) The following personal property is exempt from the statewide uniform fee imposed by this section:

(i) aircraft;

(ii) vintage vehicles as defined in Section 41-21-1; and

(iii) personal property that is exempt from state or county ad valorem property taxes under the laws of this state or of the federal government.

(3) Beginning on January 1, 1999, the uniform fee under Subsection (2) is as follows:

Age of Vehicle	Uniform Fee
12 or more years	$10
9 or more years but less than 12 years	$50
6 or more years but less than 9 years	$80
3 or more years but less than 6 years	$110
Less than 3 years	$150

(4) Notwithstanding Section 59-2-407, property subject to the uniform fee that is brought into the state and is required to be registered in Utah shall, as a condition of registration, be subject to the uniform fee unless all property taxes or uniform fees imposed by the state of origin have been paid for the current calendar year.

(5) (a) The revenues collected in each county from the uniform fee shall be distributed by the county to each taxing entity in which the property described in Subsection (2) is located in the same proportion in which revenue collected from ad valorem real property tax is distributed.

(b) Each taxing entity shall distribute the revenues received under Subsection (5)(a) in the same proportion in which revenue collected from ad valorem real property tax is distributed.

(6) Appeals of the valuation of the tangible personal property described in Subsection (2) shall be filed pursuant to Section 59-2-1005.

History: C. 1953, 59-2-405.1, enacted by L. 1998, ch. 322, § 5.

Effective Dates. - Laws 1998, ch. 322, § 13 makes the act effective on January 1, 1999.

59-2-912. Time for adoption of levy - Certification to county auditor.

The county legislative body of each taxing entity shall, before June 22 of each year, adopt a proposed or, if the tax rate is not more than the certified tax rate, a final tax rate for the taxing entity. The county legislative body shall report the rate and levy, and submit the statement required under Section 59-2-913 and any other information prescribed by rules of the commission for the preparation, review, and certification of the rate, to the county auditor of the county in which the taxing entity is located. If the county legislative body of any taxing entity fails to comply with this section, the county executive of the county in which the taxing entity is located shall notify the taxing entity by certified mail of the deficiency and forward all available documentation to the commission. The commission shall hold a hearing on the matter and certify an appropriate rate.

59-2-913. Statement of amount and purpose of levy - Contents of statement - Filing with county auditor - Transmittal to commission - Determination of tax basis - Format of statement.

(1) (a) The governing body of each taxing entity shall file a statement as provided in this section with the county auditor of the county in which the taxing entity is located.

(b) The auditor shall annually transmit the statement to the commission:

(i) before June 22; or

(ii) with the approval of the commission, on a subsequent date prior to the date established under Section 59-2-1317 for mailing tax notices.

(c) The statement shall contain the amount and purpose of each levy fixed by the governing body of the taxing entity.

(2) (a) For purposes of establishing the levy set for each of a taxing entity's applicable funds, the taxing entity's governing body or board shall:

(i) divide the budgeted property tax revenues, specified in a budget which has been adopted and approved prior to setting the levy, by an amount equal to:

(A) the aggregate taxable value of all property taxed; minus

(B) the taxing entity's estimated equalization adjustments in the current year; and

(ii) multiply the amount under Subsection (2)(a)(i) by the percentage of property taxes collected for the previous five fiscal years.

(b) For purposes of Subsection (2)(a)(i)(A), the aggregate taxable value of all property taxed includes:

(i) the total taxable value of the real and personal property contained on the tax rolls; and

(ii) the taxable value of any additional personal property estimated by the county assessor to be subject to taxation in the current year.

(3) The format of the statement under this section shall:

(a) be determined by the commission; and

(b) cite any applicable statutory provisions that:

(i) require a specific levy; or

(ii) limit the property tax levy for any taxing entity.

(4) The commission may require certification that the information submitted on a statement under this section is true and correct.

59-2-914. Excess levies - Commission to recalculate levy - Notice to implement adjusted levies to county auditor.

(1) If the commission determines that a levy established for a taxing entity set under Section 59-2-913 is in excess of the maximum levy permitted by law, the commission shall:

(a) lower the levy so that it is set at the maximum level permitted by law;

(b) notify the taxing entity which set the excessive rate that the rate has been lowered; and

(c) notify the county auditor of the county or counties in which the taxing entity is located to implement the rate established by the commission.

(2) A levy set for a taxing entity by the commission under this section shall be the official levy for that taxing entity unless:

(a) the taxing entity lowers the levy established by the commission; or

(b) the levy is subsequently modified by a court order.

(3) (a) Subject to the provisions of Subsections (1) and (2), beginning January 1, 1995, a taxing entity may impose a tax rate in excess of the maximum levy permitted by law if the rate established by the taxing entity for the current year generates revenues for the taxing entity in an amount that is less than the revenues that would be generated by the taxing entity under the certified tax rate established in Subsection 59-2-924(2).

(b) A taxing entity meeting the requirements of Subsection (3)(a) may impose a tax rate that does not exceed the certified rate established in Subsection 59-2-924(2).

59-2-918. Advertisement of proposed tax increase - Notice - Contents.

(1) (a) Except as provided in Subsection (1)(b), a taxing entity may not budget an increased amount of ad valorem tax revenue exclusive of revenue from new growth as defined in Subsection 59-2-924(2) unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year.

(b) Notwithstanding Subsection (1)(a), a taxing entity is not required to meet the advertisement requirements of this section if the taxing entity collected less than $15,000 in ad valorem tax revenues for the previous fiscal year.

(2) (a) For taxing entities operating under a July 1 through June 30 fiscal year, the advertisement required by this section may be combined with the advertisement required by Section 59-2-919.

(b) For taxing entities operating under a January 1 through December 31 fiscal year, the advertisement shall meet the size, type, placement, and frequency requirements established under Section 59-2-919.

(3) The form of the advertisement shall meet the size, type, placement, and frequency requirements established under Section 59-2-919 and shall be substantially as follows:

"NOTICE OF PROPOSED TAX INCREASE

The (name of the taxing entity) is proposing to increase its property tax revenue. As a result of the proposed increase, the tax on a (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) residence will be $_____ , and the tax on a business having the same value as the average value of a residence in the taxing entity will be _____. Without the proposed increase the tax on a (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) residence would be $_____ , and the tax on a business having the same value as the average value of a residence in the taxing entity would be _____.

This would be an increase of _____ %, which is $_____ per year ($_____ per month) on a (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) residence or $_____ per year on a business having the same value as the average value of a residence in the taxing entity. With new growth, this property tax increase, and other factors, (name of taxing entity) will increase its property tax revenue from $_____ collected last year to $_____ collected this year which is a revenue increase of _____ %.

All concerned citizens are invited to a public hearing on the tax increase to be held on (date and time) at (meeting place)."

(4) If a final decision regarding the budgeting of an increased amount of ad valorem tax revenue is not made at the public hearing, the taxing entity shall announce at the public hearing the scheduled time and place for consideration and adoption of the proposed budget increase.

(5) (a) Each taxing entity operating under the January 1 through December 31 fiscal year

shall by March 1 notify the county of the date, time, and place of the public hearing at which the budget for the following fiscal year will be considered.

(b) The county shall include the information described in Subsection (5)(a) with the tax notice.

(6) A taxing entity shall hold a public hearing under this section beginning at or after 6 p.m.

History: C. 1953, 59-2-918, enacted by L. 1985, ch. 114, § 2; 1986, ch. 105, § 5; renumbered by L. 1987, ch. 4, § 173; 1988, ch. 3, § 127; 1992, ch. 36, § 1; 1995, ch. 271, § 16; 1997, ch. 292, § 4; 1998, ch. 5, § 1; 1998, ch. 306, § 1; 1999, ch. 127, § 1.

Administrative Rules. - This section is implemented by, interpreted by, or cited as authority for the following administrative rule(s): R884-24P.

Amendment Notes. - The 1995 amendment, effective July 1, 1996, subdivided Subsection (2) and substituted "$100,000" for "$75,000" in Subsection (3)(d).

The 1997 amendment, effective January 1, 1997, in Subsection (3), inserted "meet the size, type, placement, and frequency requirements established under Section 59-2-19 and shall" in the introductory language, inserted "PROPOSED" in the title of the form, and rewrote the form; rewrote Subsection (4) to no longer require a specific form for notice of a later decision; and made a stylistic change in Subsection (5).

The 1998 amendment by ch. 306, effective retrospectively to January 1, 1998, redesignated existing Subsection (1) as (1)(a); added "Except as provided in Subsection (1)(b)" at the beginning of Subsection (1); and added Subsection (1)(b).

The 1998 amendment by ch. 5, effective January 1, 1999, divided Subsection (5), redesignating Subsection (5) as (5)(a) and adding the Subsection (5)(b) designation; made a minor stylistic change and inserted "described in Subsection (5)(a)" in Subsection (5)(b); and added Subsection (6).

The 1999 amendment, effective May 3, 1999, provided additional information on the certified tax rate notice about the impact of a proposed tax increase on an average residence.

59-2-919. Resolution proposing tax increases - Notice - Contents of notice of proposed tax increase - Personal mailed notice in addition to advertisement - Contents of personal mailed notice - Hearing - Dates.

A tax rate in excess of the certified tax rate may not be levied until a resolution has been approved by the taxing entity in accordance with the following procedure:

(1) (a) (i) The taxing entity shall advertise its intent to exceed the certified tax rate in a newspaper or combination of newspapers of general circulation in the taxing entity.

(ii) Notwithstanding Subsection (1)(a)(i), a taxing entity is not required to meet the advertisement requirements of this section if the taxing entity collected less than $15,000 in ad valorem tax revenues for the previous fiscal year.

(b) The advertisement shall be no less than 1/4 page in size and the type used shall be no smaller than 18 point, and surrounded by a 1/4-inch border.

(c) The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear.

(d) It is legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least one day per week.

(e) It is further the intent of the Legislature that the newspaper or combination of newspapers selected be of general interest and readership in the taxing entity, and not of limited subject matter.

(f) The advertisement shall be run once each week for the two weeks preceding the adoption of the final budget.

(g) The advertisement shall state that the taxing entity will meet on a certain day, time, and place fixed in the advertisement, which shall be not less than seven days after the day the first advertisement is published, for the purpose of hearing comments regarding any proposed increase and to explain the reasons for the proposed increase.

(h) The meeting on the proposed increase may coincide with the hearing on the proposed budget of the taxing entity.

(2) The form and content of the notice shall be substantially as follows:

"NOTICE OF PROPOSED TAX INCREASE

The (name of the taxing entity) is proposing to increase its property tax revenue. As a result of the proposed increase, the tax on a (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) residence will be $_____ , and the tax on a business having the same value as the average value of a residence in the taxing entity will be $_____ . Without the proposed increase the tax on a (insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars) residence would be $_____ , and the tax on a business having the same value as the average value of a residence in the taxing entity would be $_____ .

The (insert year) proposed tax rate is _____ . Without the proposed increase, the rate would be _____ . This would be an increase of _____ %, which is $_____ per year ($_____ per month) on a (insert the average

value of a residence in the taxing entity rounded to the nearest thousand dollars) residence or $_____ per year on a business having the same value as the average value of a residence in the taxing entity. With new growth, this property tax increase, and other factors, (name of taxing entity) will increase its property tax revenue from $_____ collected last year to $_____ collected this year which is a revenue increase of _____ %.

All concerned citizens are invited to a public hearing on the tax increase to be held on (date and time) at (meeting place)."

(3) The commission shall adopt rules governing the joint use of one advertisement under this section or Section 59-2-918 by two or more taxing entities and may, upon petition by any taxing entity, authorize either:

(a) the use of weekly newspapers in counties having both daily and weekly newspapers where the weekly newspaper would provide equal or greater notice to the taxpayer; or

(b) the use of a commission-approved direct notice to each taxpayer if the cost of the advertisement would cause undue hardship and the direct notice is different and separate from that provided for in Subsection (4).

(4) In addition to providing the notice required by Subsections (1) and (2), the county auditor, on or before July 22 of each year, shall notify, by mail, each owner of real estate as defined in Section 59-2-102 who is listed on the assessment roll. The notice shall:

(a) be sent to all owners of real property by mail not less than ten days before the day on which:

(i) the county board of equalization meets; and

(ii) the taxing entity holds a public hearing on the proposed increase in the certified tax rate;

(b) the notice shall be printed on a form that is:

(i) approved by the commission; and

(ii) uniform in content in all counties in the state;

(c) contain for each property:

(i) the value of the property;

(ii) the date the county board of equalization will meet to hear complaints on the valuation;

(iii) itemized tax information for all taxing entities, including a separate statement for the minimum school levy under Section 53A-17a-135 stating:

(A) the dollar amount the taxpayer would have paid based on last year's rate; and

(B) the amount of the taxpayer's liability under the current rate;

(iv) the tax impact on the property;

(v) the time and place of the required public hearing for each entity;

(vi) property tax information pertaining to taxpayer relief, options for payment of taxes, and collection procedures;

(vii) other information specifically authorized to be included on the notice under Title 59, Chapter 2, Property Tax Act; and

(viii) other property tax information approved by the commission.

(5) (a) The taxing entity, after holding a hearing as provided in this section, may adopt a resolution levying a tax rate in excess of the certified tax rate.

(b) If a resolution adopting a tax rate is not adopted on the day of the public hearing, the scheduled time and place for consideration and adoption of the resolution shall be announced at the public hearing.

(c) If a resolution adopting a tax rate is to be considered at a day and time that is more than two weeks after the public hearing described in Subsection (4)(c)(v), a taxing entity, other than a taxing entity described in Subsection (1)(a)(ii), shall advertise the date of the proposed adoption of the resolution in the same manner as provided under Subsections (1) and (2).

(6) (a) All hearings shall be open to the public.

(b) The governing body of a taxing entity conducting a hearing shall permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits.

(7) (a) Each taxing entity shall notify the county legislative body by March 1 of each year of the date, time, and place of its public hearing.

(b) A taxing entity may not schedule its hearing at the same time as another overlapping taxing entity in the same county, but all taxing entities in which the power to set tax levies is vested in the same governing board or authority may consolidate the required hearings into one hearing.

(c) The county legislative body shall resolve any conflicts in hearing dates and times after consultation with each affected taxing entity.

(8) A taxing entity shall hold a public hearing under this section beginning at or after 6 p.m.

59-2-920. Resolution and levy to be forwarded to commission - Exception.

The resolution approved in the manner provided under Section 59-2-919 shall be included with the statement of the amount and purpose of the levy required under Sections 59-2-912 and 59-2-913 and forwarded to the commission under Section 59-2-913. No tax rate in excess of the certified tax rate may be certified by the commission or implemented by the taxing entity until the resolution required under Section 59-2-919 is adopted by the governing authority of the taxing entity and submitted to the commission. If the resolution is not forwarded to the county auditor by August 17, the auditor shall forward the certified tax rate to the commission.

59-2-921. Changes in assessment roll - Rate adjustments - Notice.

(1) On or before September 15 the county board of equalization and, in cases involving the original jurisdiction of the commission or an appeal from the county board of equalization, the commission, shall annually notify each taxing entity of the following changes resulting from actions by the commission or the county board of equalization:

(a) a change in the taxing entity's assessment roll; and

(b) a change in the taxing entity's adopted tax rate.

(2) A taxing entity is not required to comply with the public hearing and advertisement requirements of Sections 59-2-918 and 59-2-919 if the commission, the county board of equalization, or a court of competent jurisdiction:

(a) changes a taxing entity's adopted tax rate; or

(b) (i) makes a reduction in the taxing entity's assessment roll; and

(ii) the taxing entity adopts by resolution an increase in its tax rate above the certified tax rate as a result of the reduction under Subsection (2)(b)(i).

(3) A rate adjustment under this section for:

(a) a taxing entity shall be:

(i) made by the county auditor;

(ii) aggregated;

(iii) reported by the county auditor to the commission; and

(iv) certified by the commission; and

(b) the state shall be made by the commission.

59-2-924. Report of valuation of property to county auditor and commission - Transmittal by auditor to governing bodies - Certified tax rate - Adoption of tentative budget.

(1) (a) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission the following statements:

(i) a statement containing the aggregate valuation of all taxable property in each taxing entity; and

(ii) a statement containing the taxable value of any additional personal property estimated by the county assessor to be subject to taxation in the current year.

(b) The county auditor shall, on or before June 8, transmit to the governing body of each taxing entity:

(i) the statements described in Subsections (1)(a)(i) and (ii);

(ii) an estimate of the revenue from personal property;

(iii) the certified tax rate; and

(iv) all forms necessary to submit a tax levy request.

(2) (a) (i) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were collected by that taxing entity for the prior year.

(ii) For purposes of this Subsection (2), "ad valorem property tax revenues" do not include:

(A) collections from redemptions;

(B) interest; and

(C) penalties.

(iii) Except as provided in Subsection (2)(a)(iv), the certified tax rate shall be calculated by dividing the ad valorem property tax revenues collected for the prior year by the taxing entity by the taxable value established in accordance with Section 59-2-913.

(iv) The certified tax rates for the taxing entities described in this Subsection (2)(a)(iv) shall be calculated as follows:

(A) except as provided in Subsection (2)(a)(iv)(B), for new taxing entities the certified tax rate is zero;

(B) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

(I) in a county of the first, second, or third class, the levy imposed for municipal-type services under Sections 17-34-1 and 17-36-9; and

(II) in a county of the fourth, fifth, or sixth class, the levy imposed for general county purposes and such other levies imposed solely for the municipal-type services identified in Section 17-34-2 and Subsection 17-36-3(22);

(C) for debt service voted on by the public, the certified tax rate shall be the actual levy imposed by that section, except that the certified tax rates for the following levies shall be calculated in accordance with Section 59-2-913 and this section:

(I) school leeways provided for under Sections 11-2-7, 53A-16-110, 53A-17a-125, 53A-17a-127, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103; and

(II) levies to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-906.3.

(v) A judgment levy imposed under Section 59-2-1328 or Section 59-2-1330 shall be

established at that rate which is sufficient to generate only the revenue required to satisfy the known, unpaid judgments. The ad valorem property tax revenue generated by the judgment levy shall not be considered in establishing the taxing entity's aggregate certified tax rate.

(b) (i) For the purpose of calculating the certified tax rate, the county auditor shall use the taxable value of property on the assessment roll.

(ii) For purposes of Subsection (2)(b)(i), the taxable value of property on the assessment roll does not include new growth as defined in Subsection (2)(b)(iii).

(iii) "New growth" means:

(A) the difference between the increase in taxable value of the taxing entity from the previous calendar year to the current year; minus

(B) the amount of increase to locally assessed real property taxable values resulting from factoring, reappraisal, or any other adjustments.

(c) Beginning January 1, 1997, if a taxing entity receives increased revenues from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of any county imposing a sales and use tax under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, the taxing entity shall decrease its certified tax rate to offset the increased revenues.

(d) (i) Beginning July 1, 1997, if a county has imposed a sales and use tax under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:

(A) decreased on a one-time basis by the amount of the estimated sales tax revenue to be distributed to the county under Subsection 59-12-1102(3); and

(B) increased by the amount necessary to offset the county's reduction in revenue from uniform fees on tangible personal property under Section 59-2-404, 59-2-405, or 59-2-405.1 as a result of the decrease in the certified tax rate under Subsection (2)(d)(i)(A).

(ii) The commission shall determine estimates of sales tax distributions for purposes of Subsection (2)(d)(i).

(e) For the calendar year beginning on January 1, 1998, and ending December 31, 1998, a taxing entity's certified tax rate shall be increased by the amount necessary to offset the decrease in revenues from uniform fees on tangible personal property under Section 59-2-405 as a result of the decrease in uniform fees on tangible personal property under Section 59-2-405 enacted by the Legislature during the 1997 Annual General Session.

(f) Beginning January 1, 1998, if a municipality has imposed an additional resort communities sales tax under Section 59-12-402, the municipality's certified tax rate shall be decreased on a one-time basis by the amount necessary to offset the first 12 months of estimated revenue from the additional resort communities sales tax imposed under Section 59-12-402.

(g) For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

(3) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.

(b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county auditor of:

(i) its intent to exceed the certified tax rate; and

(ii) the amount by which it proposes to exceed the certified tax rate.

(c) The county auditor shall notify all property owners of any intent to exceed the certified tax rate in accordance with Subsection 59-2-919(2).

(4) (a) The taxable value for the base year under Subsection 17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be, shall be reduced for any year to the extent necessary to provide a redevelopment agency established under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act, with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(i) in that year there is a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i);

(ii) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(iii) the decrease results in a reduction of the amount to be paid to the agency under Section 17A-2-1247 or 17A-2-1247.5.

(b) The taxable value of the base year under Subsection 17A-2-1247(2)(a) or 17A-2-1202(2), as the case may be, shall be increased in any year to the extent necessary to provide a redevelopment agency with approximately the same amount of money as the agency would have received without an increase in the certified tax rate that year if:

(i) in that year the taxable value for the base year under Subsection 17A-2-1247(2) or 17A-2-1202(2) is reduced due to a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i); and

(ii) The certified tax rate of a city, school district, or special district increases independent of the adjustment to the taxable value of the base year.

(c) Notwithstanding a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i), the amount of money allocated and, when collected, paid each year to a redevelopment agency established under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act, for the payment of bonds or other contract indebtedness, but not for administrative costs, may not be less than that amount would have been without a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i).

(5) (a) Except as provided in Subsections (5)(d) through (f), for the calendar year beginning on January 1, 1998, and ending December 31, 1998, to impose a tax rate that exceeds the certified tax rate established in Subsection (2), a taxing entity shall obtain approval for the tax increase by a majority vote of the:

(i) governing body; and

(ii) people as provided in Subsection (5)(b).

(b) To obtain voter approval for a tax increase under Subsection (5)(a), a taxing entity shall:

(i) hold an election on the fourth Tuesday in June; and

(ii) conduct the election according to the procedures and requirements of Title 20A, Election Code, governing local elections.

(c) A tax rate imposed by a taxing entity under this Subsection (5) may not exceed the maximum levy permitted by law under Section 59-2-908.

(d) Notwithstanding Subsection (5)(a), a school district is not required to obtain voter approval under this Subsection (5) to impose a tax rate that exceeds the certified tax rate:

(i) under Section 53A-17a-135, if the Legislature increases the minimum basic tax rate under Section 53A-17a-135;

(ii) under Section 53A-21-103;

(iii) under Section 53A-16-111;

(iv) if, on or after January 1, 1997, but on or before December 31, 1997, the school district obtained voter approval to impose the tax rate; or

(v) if, on or after January 1, 1998, the school district obtains voter approval to impose the tax rate under a statutory provision, other than the provisions of this section, requiring voter approval to impose the tax rate.

(e) Notwithstanding Subsection (5)(a), a municipality is not required to obtain voter approval under this Subsection (5) to impose a tax rate that exceeds the certified tax rate if:

(i) the municipality meets the requirements of Sections 59-2-918 and 59-2-919; and

(ii) in adopting the resolution required under Section 59-2-919, the municipal legislative body obtains approval to impose the tax rate by two-thirds of all members of the municipal legislative body.

(f) Notwithstanding Subsection (5)(a), a county or municipality is not required to obtain voter approval under this Subsection (5) to impose a tax rate under Section 17A-2-1322 that exceeds the certified tax rate calculated for a special service district established under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, if the county or municipality obtained voter approval to impose a tax on property within the special service district:

(i) under Section 17A-2-1322; and

(ii) on or after June 1, 1996.

ADDENDUM B

IN THE COURT OF APPEALS OF THE STATE OF UTAH

THE BOARD OF EDUCATION OF THE ALPINE SCHOOL DISTRICT, Petitioner / Appellant, vs. UTAH STATE TAX COMMISSION, Respondent / Appellee.	)	AFFIDAVIT OF KYLE BARRICK No. 20000109-CA Priority No. 14

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

KYLE BARRICK, being first duly sworn, deposes and says:

1. I am employed as a law clerk in the Tax & Revenue Division of the Utah Attorney General's Office.

2. At the direction of Timothy A. Bodily, Assistant Attorney General, I was asked to prepare a copy of portions of the February 23, 1998 discussions of Senate Bill 50.

3. The attached Exhibit A is a correct transcript of the above mentioned Senate Bill 50. I have thoroughly reviewed Exhibit A for accuracy.

DATED this 12th day of July, 2000.

KYLE BARRICK
Law Clerk
Tax & Revenue Division

Subscribed and sworn to before this 12th day of July, 2000.

NOTARY PUBLIC
DIANE SANDBERG
160 E. 300 So., 5th Floor
Salt Lake City, Utah 84114
My Commission Expires
January 11, 2002
STATE OF UTAH

NOTARY PUBLIC
Residing at Salt Lake County

My Commission Expires:

1-11-02

SENATE BILL 50 - FEBRUARY 23, 1998

Sen. Mantes: . . . and the essence of the bill is that if, if a county collects more than they are collecting under the present system they would return it. If they collect less they would be able to be kept whole. That is the same stipulation we gave them when we went from .017 to .015 is my understanding. So it is not a unique situation. I think there has to be some protection for the counties but we're talking about peanuts. We are, we are not talking about much money. These numbers, the way they are drafted right now are revenue producing. That bottom line is a 1.7 million dollar revenue enhancement so I am guessing that, that with those numbers structured that way there are not going to be very many counties that are going to be impacted heavily. I just don't see that happening.

Sen. Blackham: . . . No one anticipates it being large amounts because we do have the bill basically revenue neutral. A little on the plus side. Now those counties that get a windfall will have to reduce because the bill doesn't allow that. So the bill doesn't allow anyone to have an increase. . . .

ADDENDUM C

H.B. 178 Enrolled

PROPERTY TAX CERTIFIED TAX RATE

ADJUSTMENTS - UNIFORM FEES

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Raymond W. Short

AN ACT RELATING TO THE PROPERTY TAX ACT; REQUIRING THE STATE TAX COMMISSION TO ADJUST A TAXING ENTITY'S CERTIFIED TAX RATE AND CERTIFIED REVENUE LEVY UNDER CERTAIN CIRCUMSTANCES; REPEALING OBSOLETE LANGUAGE; MAKING TECHNICAL CHANGES; AND PROVIDING FOR RETROSPECTIVE OPERATION.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

59-2-924, as last amended by Chapter 353, Laws of Utah 1999

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-2-924** is amended to read:

59-2-924. Report of valuation of property to county auditor and commission -- Transmittal by auditor to governing bodies -- Certified tax rate -- Adoption of tentative budget.

(1) (a) Before June 1 of each year, the county assessor of each county shall deliver to the county auditor and the commission the following statements:

(i) a statement containing the aggregate valuation of all taxable property in each taxing entity; and

(ii) a statement containing the taxable value of any additional personal property estimated by the county assessor to be subject to taxation in the current year.

(b) The county auditor shall, on or before June 8, transmit to the governing body of each taxing entity:

(i) the statements described in Subsections (1)(a)(i) and (ii);
(ii) an estimate of the revenue from personal property;
(iii) the certified tax rate; and

(iv) all forms necessary to submit a tax levy request.

(2) (a) (i) The "certified tax rate" means a tax rate that will provide the same ad valorem property tax revenues for a taxing entity as were collected by that taxing entity for the prior year.

(ii) For purposes of this Subsection (2), "ad valorem property tax revenues" do not include:

(A) collections from redemptions;
(B) interest; and
(C) penalties.

(iii) Except as provided in Subsection (2)(a)(iv), the certified tax rate shall be calculated by dividing the ad valorem property tax revenues collected for the prior year by the taxing entity by the taxable value established in accordance with Section 59-2-913 .

(iv) The certified tax rates for the taxing entities described in this Subsection (2)(a)(iv) shall be calculated as follows:

(A) except as provided in Subsection (2)(a)(iv)(B), for new taxing entities the certified tax rate is zero;

(B) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

(I) in a county of the first, second, or third class, the levy imposed for municipal-type services under Sections 17-34-1 and 17-36-9 ; and

(II) in a county of the fourth, fifth, or sixth class, the levy imposed for general county purposes and such other levies imposed solely for the municipal-type services identified in Section 17-34-2 and Subsection 17-36-3 (22);

(C) for debt service voted on by the public, the certified tax rate shall be the actual levy imposed by that section, except that the certified tax rates for the following levies shall be calculated in accordance with Section 59-2-913 and this section:

(I) school leeways provided for under Sections 11-2-7 , 53A-16-110 , 53A-17a-125 , 53A-17a-127 , 53A-17a-134 , 53A-17a-143 , 53A-17a-145 , and 53A-21-103 ; and

(II) levies to pay for the costs of state legislative mandates or judicial or administrative orders under Section 59-2-906.3 .

(v) A judgment levy imposed under Section 59-2-1328 or Section 59-2-1330 shall be

established at that rate which is sufficient to generate only the revenue required to satisfy the known, unpaid judgments. The ad valorem property tax revenue generated by the judgment levy shall not

be considered in establishing the taxing entity's aggregate certified tax rate.

(b) (i) For the purpose of calculating the certified tax rate, the county auditor shall use the taxable value of property on the assessment roll.

(ii) For purposes of Subsection (2)(b)(i), the taxable value of property on the assessment roll does not include new growth as defined in Subsection (2)(b)(iii).

(iii) "New growth" means:

(A) the difference between the increase in taxable value of the taxing entity from the previous calendar year to the current year; minus

(B) the amount of increase to locally assessed real property taxable values resulting from factoring, reappraisal, or any other adjustments.

(c) Beginning January 1, 1997, if a taxing entity receives increased revenues from uniform fees on tangible personal property under Section 59-2-404 , 59-2-405 , or 59-2-405.1 as a result of any county imposing a sales and use tax under [~~Title 59,~~] Chapter 12, Part 11, County Option Sales and Use Tax, the taxing entity shall decrease its certified tax rate to offset the increased revenues.

(d) (i) Beginning July 1, 1997, if a county has imposed a sales and use tax under [~~Title 59,~~] Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:

(A) decreased on a one-time basis by the amount of the estimated sales tax revenue to be distributed to the county under Subsection 59-12-1102 (3); and

(B) increased by the amount necessary to offset the county's reduction in revenue from uniform fees on tangible personal property under Section 59-2-404 , 59-2-405 , or 59-2-405.1 as a result of the decrease in the certified tax rate under Subsection (2)(d)(i)(A).

(ii) The commission shall determine estimates of sales tax distributions for purposes of Subsection (2)(d)(i).

[~~(e) For the calendar year beginning on January 1, 1998, and ending December 31, 1998, a taxing entity's certified tax rate shall be increased by the amount necessary to offset the decrease in revenues from uniform fees on tangible personal property under Section 59-2-405 as a result of the decrease in uniform fees on tangible personal property under Section 59-2-405 enacted by the Legislature during the 1997 Annual General Session.~~]

[~~(f)~~] *(e)* Beginning January 1, 1998, if a municipality has imposed an additional resort communities sales tax under Section 59-12-402 , the municipality's certified tax rate shall

be decreased
on a one-time basis by the amount necessary to offset the first 12 months of estimated revenue from
the additional resort communities sales tax imposed under Section 59-12-402 .
[~~(g)~~] *(f)* For the calendar year beginning on January 1, 1999, and ending on December 31,
1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the
adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1
as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1
enacted by the Legislature during the 1998 Annual General Session.
(g) For purposes of Subsections (2)(h) through (j):
(i) "1998 actual collections" means the amount of revenues a taxing entity actually collected
for the calendar year beginning on January 1, 1998, under Section 59-2-405 for:
(A) motor vehicles required to be registered with the state that weigh 12,000 pounds or less;
and
(B) state-assessed commercial vehicles required to be registered with the state that weigh
12,000 pounds or less.
(ii) "1999 actual collections" means the amount of revenues a taxing entity actually collected
for the calendar year beginning on January 1, 1999, under Section 59-2-405.1.
(h) For the calendar year beginning on January 1, 2000, the commission shall make the following adjustments:
(i) the commission shall make the adjustment described in Subsection (2)(i)(i) if, for the calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than
the sum of:
(A) the taxing entity's 1999 actual collections; and
(B) any adjustments the commission made under Subsection (2)(f);
(ii) the commission shall make the adjustment described in Subsection (2)(i)(ii) if, for the

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calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections were greater than
the taxing entity's 1999 actual collections, but the taxing entity's 1998 actual collections were less
than the sum of:
(A) the taxing entity's 1999 actual collections; and
(B) any adjustments the commission made under Subsection (2)(f); and
(iii) the commission shall make the adjustment described in Subsection (2)(i)(iii) if, for the
calendar year beginning on January 1, 1999, a taxing entity's 1998 actual collections

were less than
the taxing entity's 1999 actual collections.
(i) (i) For purposes of Subsection (2)(h)(i), the commission shall increase a taxing entity's
certified tax rate under this section and a taxing entity's certified revenue levy under Section
59-2-906.1 by the amount necessary to offset the difference between:
(A) the taxing entity's 1998 actual collections, and
(B) the sum of:
(I) the taxing entity's 1999 actual collections; and
(II) any adjustments the commission made under Subsection (2)(f).
(ii) For purposes of Subsection (2)(h)(ii), the commission shall decrease a taxing entity's
certified tax rate under this section and a taxing entity's certified revenue levy under Section
59-2-906.1 by the amount necessary to offset the difference between:
(A) the sum of:
(I) the taxing entity's 1999 actual collections; and
(II) any adjustments the commission made under Subsection (2)(f); and
(B) the taxing entity's 1998 actual collections.
(iii) For purposes of Subsection (2)(h)(iii), the commission shall decrease a taxing entity's
certified tax rate under this section and a taxing entity's certified revenue levy under Section
59-2-906.1 by the amount of any adjustments the commission made under Subsection (2)(f).
(j) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for purposes of Subsections (2)(f) through (i), the commission may make rules establishing the method
for determining a taxing entity's 1998 actual collections and 1999 actual collections.

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(3) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.
(b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county auditor of:
(i) its intent to exceed the certified tax rate; and
(ii) the amount by which it proposes to exceed the certified tax rate.
(c) The county auditor shall notify all property owners of any intent to exceed the certified tax rate in accordance with Subsection 59-2-919 (2).
(4) (a) The taxable value for the base year under Subsection 17A-2-1247 (2)(a) or 17A-2-1202 (2), as the case may be, shall be reduced for any year to the extent necessary to provide a redevelopment agency established under Title 17A, Chapter 2, Part 12. Utah Neighborhood Development Act, with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:

(i) in that year there is a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i);

(ii) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and

(iii) the decrease results in a reduction of the amount to be paid to the agency under Section 17A-2-1247 or 17A-2-1247.5 .

(b) The taxable value of the base year under Subsection 17A-2-1247 (2)(a) or 17A-2-1202 (2), as the case may be, shall be increased in any year to the extent necessary to provide a redevelopment agency with approximately the same amount of money as the agency would have received without an increase in the certified tax rate that year if:

(i) in that year the taxable value for the base year under Subsection 17A-2-1247 (2) or 17A-2-1202 (2) is reduced due to a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i); and

(ii) The certified tax rate of a city, school district, or special district increases independent of the adjustment to the taxable value of the base year.

(c) Notwithstanding a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i), the amount of money allocated and, when collected, paid each year to a redevelopment agency

established under Title 17A, Chapter 2, Part 12, Utah Neighborhood Development Act, for the payment of bonds or other contract indebtedness, but not for administrative costs, may not be less than that amount would have been without a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i).

~~[(5) (a) Except as provided in Subsections (5)(d) through (f), for the calendar year beginning on January 1, 1998, and ending December 31, 1998, to impose a tax rate that exceeds the certified tax rate established in Subsection (2), a taxing entity shall obtain approval for the tax increase by a majority vote of the:]~~

~~[(i) governing body; and]~~

~~[(ii) people as provided in Subsection (5)(b).]~~

~~[(b) To obtain voter approval for a tax increase under Subsection (5)(a), a taxing entity shall:]~~

~~[(i) hold an election on the fourth Tuesday in June; and]~~

~~[(ii) conduct the election according to the procedures and requirements of Title 20A, Election~~

~~Code, governing local elections.~~]

[~~(c) A tax rate imposed by a taxing entity under this Subsection (5) may not exceed the maximum levy permitted by law under Section 59-2-908 .~~]

[~~(d) Notwithstanding Subsection (5)(a), a school district is not required to obtain voter approval under this Subsection (5) to impose a tax rate that exceeds the certified tax rate:~~]

[~~(i) under Section 53A-17a-135 , if the Legislature increases the minimum basic tax rate under Section 53A-17a-135 ;~~]

[~~(ii) under Section 53A-21-103 ;~~]

[~~(iii) under Section 53A-16-111 ;~~]

[~~(iv) if, on or after January 1, 1997, but on or before December 31, 1997, the school district obtained voter approval to impose the tax rate; or~~]

[~~(v) if, on or after January 1, 1998, the school district obtains voter approval to impose the tax rate under a statutory provision, other than the provisions of this section, requiring voter approval to impose the tax rate.~~]

[~~(e) Notwithstanding Subsection (5)(a), a municipality is not required to obtain voter~~

~~approval under this Subsection (5) to impose a tax rate that exceeds the certified tax rate if:~~]

[~~(i) the municipality meets the requirements of Sections 59-2-918 and 59-2-919 ; and~~]

[~~(ii) in adopting the resolution required under Section 59-2-919 , the municipal legislative body obtains approval to impose the tax rate by two-thirds of all members of the municipal legislative body.~~]

[~~(f) Notwithstanding Subsection (5)(a), a county or municipality is not required to obtain voter approval under this Subsection (5) to impose a tax rate under Section 17A-2-1322 that exceeds the certified tax rate calculated for a special service district established under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, if the county or municipality obtained voter approval to impose a tax on property within the special service district:~~]

[~~(i) under Section 17A-2-1322 ; and~~]

[~~(ii) on or after June 1, 1996.~~]

Section 2. **Retrospective operation.**

This act has retrospective operation to January 1, 2000.

ADDENDUM D

BEFORE THE UTAH STATE TAX COMMISSION

NEBO SCHOOL DISTRICT, Petitioner, and ALPINE SCHOOL DISTRICT, Petitioner, v. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION** Appeal Nos. (Nebo Appeal) 99-0876 (Alpine Appeal) 99-0859 Tax Type: Property Tax Rate Judge: Hendrickson

Presiding:

Pam Hendrickson, Commissioner
R. Bruce Johnson, Commissioner
Palmer DePaulis, Commissioner

Appearances:

For Petitioner: Tracy Olsen, Nebo School District
Keith Bradford, Alpine School District
Jim Hanson, Alpine School District
Joe Ferre, Alpine School District
For Respondent: Dave Vanier, Property Tax Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on November 22, 1999. Both the Nebo School District ("Nebo") and the Alpine School District ("Alpine") filed separate requests for expedited hearings with the Tax Commission. As a single

primary issue underlies both these appeals and the school districts are operating under rigid time constraints, the Tax Commission, with the approval of all parties, has consolidated the two appeals. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The issue in question concerns property tax rates for the 1999 tax year.

2. For the 1999 tax year, Property Tax Division ("the Division") calculated "certified tax rates" for each taxing entity in the state. The 1999 certified tax rate formula included an adjustment to offset changes in motor vehicle fee-in-lieu revenue resulting from 1998 legislative modifications to the motor vehicle statutes. Utah Code Ann. §59-2-924(2)(g). This adjustment was estimated by the Division for each taxing entity and used to calculate its certified tax rates.

3. After receiving their certified tax rates, Nebo and Alpine subsequently set their budgets for the upcoming fiscal year. Each school district proposed a 1999 tax rate that was higher than its total certified tax rate. Both Nebo and Alpine properly completed the statutory tax increase provisions of Utah Code Ann. §59-2-919 that were necessary for them to levy their respective proposed property tax increases.

4. Before tax rates proposed by taxing entities were approved by the Division for the 1999 tax year, the Tax Commission determined that the Division's fee-in-lieu revenue adjustments, as used in calculation of certified tax rates, had been miscalculated. The Tax

Commission ordered the Division to revise these adjustments and recalculate certified tax rates.

5. The revised fee-in-lieu revenue adjustments generally resulted in lower certified tax rates. In its process of approving the proposed tax rates, the Division lowered the proposed rates that were submitted by both Nebo and Alpine to reflect the change between the recalculated, lower certified tax rates and the original, higher certified tax rates.

APPLICABLE LAW

1. Section 59-2-924(2)(g) requires the 1999 certified tax rates to be adjusted to offset changes in motor vehicle revenue resulting from 1998 Legislative enactments and provides as follows:

> For the calendar year beginning on January 1, 1999, and ending on December 31, 1999, a taxing entity's certified tax rate shall be adjusted by the amount necessary to offset the adjustment in revenues from uniform fees on tangible personal property under Section 59-2-405.1 as a result of the adjustment in uniform fees on tangible personal property under Section 59-2-405.1 enacted by the Legislature during the 1998 Annual General Session.

2. Section 59-2-919 sets forth the procedures that a taxing entity must complete prior to its levying a property tax rate that exceeds its certified tax rate.

3. Utah Code Ann. §59-2-914 requires the Commission to lower property tax levies proposed by taxing entities if those levies exceed the maximum levy permitted by law, providing as follows:

> (1) If the commission determines that a levy established for a taxing entity set under Section 59-2-913 is in excess of the maximum levy

permitted by law, the commission shall:
(a) lower the levy so that it is set at the maximum level permitted by law;
(b) notify the taxing entity which set the excessive rate that the rate has been lowered; and
(c) notify the county auditor of the county or counties in which the taxing entity is located to implement the rate established by the commission.
(2) A levy set for a taxing entity by the commission under this section shall be the official levy for that taxing entity unless:
(a) the taxing entity lowers the levy established by the commission; or
(b) the levy is subsequently modified by a court order.
(3) (a) Subject to the provisions of Subsections (1) and (2), beginning January 1, 1995, a taxing entity may impose a tax rate in excess of the maximum levy permitted by law if the rate established by the taxing entity for the current year generates revenues for the taxing entity in an amount that is less than the revenues that would be generated by the taxing entity under the certified tax rate established in Subsection 59-2-924(2).
(b) A taxing entity meeting the requirements of Subsection (3)(a) may impose a tax rate that does not exceed the certified rate established in Subsection 59-2-924(2).

CONCLUSIONS OF LAW

By order of the Commission, the Division recalculated the 1999 certified tax rates for all taxing entities to correct for an overestimated subsection 59-2-924(2)(g) fee-in-lieu adjustment that was used by the Division in calculating the original certified tax rates. However, by the time the Division recalculated the certified tax rates, most of the steps associated with the final tax rate setting process had already occurred, including the proposal of tax rates by the taxing entities, the receipt of the subsection 59-2-919(4) notices of valuation by all taxpayers, and the

completion of the publication and hearing requirements by those taxing entities proposing tax increases.

Upon issuing the recalculated certified tax rates, the Division did not require a repeat of these tax rate setting processes that had already occurred. Not only would repeating these processes have been inefficient, it would have also delayed the issuance of tax notices significantly beyond the November 1 deadline, as required under Utah Code Ann. §59-2-1317(4). Instead, for those entities whose proposed tax rates exceeded the recalculated certified tax rates, the Division lowered these taxing entities' proposed tax rates to reflect the difference between the lower, recalculated tax rates and the original, higher certified tax rates.

After Nebo and Alpine received their original certified tax rates, they both proposed tax increases and completed the required procedures of section 59-2-919, which, upon completion, allowed them to levy property tax rates higher than their original certified tax rates. However, once the Division recalculated Nebo's and Alpine's certified tax rates, it lowered their proposed tax rate increases by an amount that reflected the decrease between their respective original and recalculated certified tax rates. Both Nebo and Alpine protest the Division's action to lower their proposed tax rates and petition the Commission to approve their proposed tax rate increases in their entirety.

Authority to Lower Rates. Nebo and Alpine contend that the authority given the Commission under section 59-2-914 to lower their proposed tax rates does not extend to the circumstances under which the Division did so. Section 914 allows the Commission (or the Division

acting on behalf of the Commission) to lower a taxing entity's proposed tax rate if that proposed tax rate is "in excess of the maximum levy permitted by law." Both Nebo's and Alpine's proposed tax rate is higher than its recalculated certified tax rate. Section 59-2-919 does not allow a taxing entity to levy a tax rate higher than its certified tax rate unless the procedures found in that section are satisfied. Nebo and Alpine did complete those procedures, so neither Nebo's nor Alpine's proposed tax rate could be lowered just because its proposed tax rate exceeded its recalculated certified tax rate.

Instead, the Division lowered Nebo's and Alpine's proposed tax rates to satisfy the provisions of subsection 59-2-924(2)(g). That subsection requires the Commission to adjust a taxing entity's certified tax rate to offset any changes in fee-in-lieu revenue resulting from the Legislature's enactment of the new age-based assessment system for motor vehicles. This adjustment ensures that a taxing entity does not receive a shortfall or windfall in its combined total of property tax and fee-in-lieu revenue as a result of this specific legislative change.

The Division calculated the original certified tax rates by adding an adjustment to property tax revenue in order to offset the corresponding loss in fee-in-lieu revenue, as estimated by the Division. Thus, at the time a taxing entity set its budget and proposed its property tax rates, its budget should have reflected fee-in-lieu revenue that corresponded to the Division's estimates of it and property tax revenue that reflected the amount that would be generated by the proposed tax rates.

Later, the certified tax rates were recalculated using a smaller fee-in-lieu revenue

adjustment, after it was determined that the amount of fee-in-lieu revenue adjustment used to originally calculate the certified tax rates was in error. Accordingly, the amount of fee-in-lieu revenue now estimated to be received in 1999 will be higher than the amount that theoretically was reflected in a taxing entity's budget prior to the recalculation.

Should the proposed property tax rate remain unchanged and generate the same amount reflected in the taxing entity's budget, the combination of that property tax revenue and the now higher-projected fee-in-lieu revenue would exceed the total amount of property tax and fee-in-lieu revenue reflected in the taxing entity's budget. This would result in a windfall to the taxing entity unless its proposed property tax rate were reduced to counter the increase in fee-in-lieu revenue. The windfall would result regardless of whether the Division provided the taxing entities with an original estimate of 1999 fee-in-lieu revenue to use in their budgetary process. Approving a proposed tax rate that results in such a windfall would violate the subsection 59-2-924(2)(g) direction that no revenue shortfalls or windfalls occur because of the fee-in-lieu legislative changes and, therefore, would exceed the maximum levy permitted by law. Accordingly, the Division's reductions of Nebo's and Alpine's proposed tax rates were appropriate under these circumstances and in accordance with section 914.

Matching Funds Offered by the State. School districts such as Nebo and Alpine have several property tax rates representing different funds that are then combined to produce one total tax rate. The Division, in effect, lowered Nebo's and Alpine's total tax rates by lowering, in

each instance, the individual funds' separate tax rates. Both Nebo and Alpine argue that they are harmed by this action because several of their funds require a specific tax rate to be levied before the school districts are entitled to additional, "matching" revenues from the state. By lowering the rates of each individual fund, Nebo and Alpine contend that the Division has improperly prevented them from their entitlements to receive these matching revenues.

As stated above, the Commission has determined that the Division's reduction in the total property tax rate is appropriate. However, the Division should offer any school district, including Nebo and Alpine, the opportunity to redistribute its total property tax rate approved by the Division among its individual funds. In so doing, the taxing entity could increase the individual tax rates for funds sensitive to matching revenues by decreasing those individual tax rates for funds not impacted by matching revenues.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds that the Division's reduction of Nebo's and Alpine's total proposed property tax rates for 1999 was appropriate. However, the Division should provide Nebo, Alpine and all other similarly-affected school districts the opportunity to adjust their separate tax rates for individual funds in order to optimize their potential to obtain matching revenues from the state. It is so ordered.

Appeal No. 99-0876

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this 3 day of January, ~~1999.~~ 2000

Pam Hendrickson
Commissioner

Palmer DePaulis
Commissioner

DISSENTING OPINION

I respectfully dissent from the position taken by my colleagues in this case. I do not agree that Nebo's and Alpine's proposed tax rates exceed the "maximum levy permitted by law" and, accordingly, do not find that either section 59-2-914 or 59-2-924(2)(g) grants the Commission the power to lower either Nebo's or Alpine's proposed tax rate under the circumstances present here.

Section 59-2-914. Section 59-2-914 only allows the Commission to reduce a proposed tax rate when that levy exceeds the "maximum levy permitted by law." The maximum levy permitted by law is the higher of the "certified tax rate" or the tax rate approved after the notice and hearing required by section 59-2-919. Both Nebo and Alpine successfully completed all of the

section 919 tax increase requirements associated with their respective proposed tax rates, and each has passed a resolution to levy this tax rate. Accordingly, Nebo's and Alpine's proposed tax rates, not their certified rates, are now the maximum levies permitted by law. Thus, section 59-2-914 does not authorize us to reduce Nebo's or Alpine's rate.[1]

Section 59-2-924(2)(g). Both Nebo's and Alpine's recalculated certified tax rates are lower than their original certified tax rates because they now both reflect greater amounts of fee-in-lieu motor vehicle revenues than originally estimated by the Division.[2] After recalculating Nebo's and Alpine's certified tax rates, the Division lowered the school districts' proposed tax rates to mirror the respective decreases in their certified tax rates, even though Nebo and Alpine had met the tax increase requirements necessary to levy their proposed tax rates. Nebo and Alpine's certified tax rates were recalculated because they will actually receive more 1999 fee-in-lieu revenue than originally estimated for the 1999 tax year by the Division when the original certified tax rates were calculated. The Division asserts that Nebo's and Alpine's proposed tax rates must also be lowered

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[1] Certainly, when a proposed tax rate exceeds the certified tax rate and the taxing entity has not completed the tax increase requirements of section 59-2-919, then that proposed tax rate exceeds the maximum levy permitted by law. Under such circumstances, the Commission is required to lower the proposed tax rate so that it does not exceed the certified tax rate.

[2] The Division was required to estimate fee-in-lieu revenue because the Legislature mandated that a fee-in-lieu revenue adjustment be made to the 1999 certified tax rates to accommodate the change from a value-based to an age-based assessment system for motor vehicles. Subsection 59-2-924(2)(g). When the shortfalls in fee-in-lieu revenue originally estimated by the Division were later revised downward, the recalculated certified tax rates, in most instances, also decreased.

because of subsection 924(2)(g); otherwise, Nebo and Alpine will receive a windfall equal to the additional amount of 1999 fee-in-lieu revenue not present in the original 1999 estimate of fee-in-lieu revenue.

The Division's assertion fails for the simple reason that subsection 924(2)(g) specifically gives the Commission the power to adjust only certified tax rates, not proposed tax rates. As noted above, the proposed rates, not the certified rates, are the maximum levies permitted by law. Because section 924(2)(g) fails to authorize the Division to lower Nebo's or Alpine's proposed tax rate, those rates must be approved.

I understand that a decision in this case consistent with my dissent might enable a taxing entity to receive a windfall that has not been anticipated by statute and, indeed, one that the legislature sought to prevent. Such a decision would also further disrupt this year's tax process should another set of final approved tax rates be issued because tax notices have already been mailed and the due date for payment has passed. The majority opinion eliminates these concerns. However, I do not believe the relevant statutes authorize the Division to lower Nebo's and Alpine's proposed tax rates, and I must respectfully dissent from the conclusions reached by my colleagues.

R. Bruce Johnson
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to UtahCode Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §§59-1-601 and 63-46b-13 et. seq.

PH/KC/99-0876 fcf

Utah State Tax Commission
USTC - Appeal

Certificate of Mailing

Nebo School District v. Property Tax Division	99-0876

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**** *CERTIFICATION* ****

I hereby certify that I mailed a copy of the foregoing document addressed to each of the above named parties.

01/03/00
Date

Susan Waters
Signature